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Regional Counsel, Western Region

Assistant Chief Counsel (Income Tax and Accounting)
CC:IT&A:4

Application of the Failure to Pay Penalty to Installment
Payment Agreements

This is our final response to your memorandum in which you question the wisdom of the Service's policy of asserting the failure to pay (FTP) penalty, under section 6651(a)(1) of the Internal Revenue Code, when entering into an installment payment agreement with a taxpayer under section 6159 of the Code. You propose that the Service stop accruing the FTP penalty whenever entering into an installment payment agreement.

As we indicated in our March 1, 1991, memorandum, the Assistant Chief Counsel (General Litigation), the Service's Office of Field Operations, and this office disagreed with views of the Assistant to the Commissioner (Taxpayer Ombudsman) as to the correct result. In order to resolve that disagreement, we recently met with representatives of the Taxpayer Ombudsman, and they agreed that legally the Service can properly assert the penalty despite entering into an installment payment agreement. We agreed with the Taxpayer Ombudsman's representatives that the penalty should not be "automatically" asserted, rather a determination as to whether or not the taxpayer had reasonable cause for failing to pay timely must be made.

Since we wrote to your office, two developments have occurred regarding the FTP penalty. First, the Collection Division is developing relaxed procedures for low income, unsophisticated taxpayers, helping to ensure that the penalty would not be asserted in the proper case. Second, Congressman J. J. Pickle's Subcommittee on Oversight is currently considering proposed legislation that would prevent the Service from asserting the FTP penalty when taxpayers promptly enter into installment payment agreements and meet the conditions of those agreements. This office disagreed with the proposal. In our view, if a taxpayer like [REDACTED] fails to pay his taxes for [REDACTED] years, he should be penalized for that failure to pay, despite an installment payment agreement. We recommended, in the alternative, to either

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eliminate the FTP penalty and increase the underpayment interest rate to reflect market rates or to treat an installment payment agreement as an extension of time to pay the tax.

We regret the delay in responding to your memorandum. If you have any further questions please call Barbara B. Walker of my staff at FTS 566-3453.

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(Signed) Norlyn D. Miller, Jr.

By _____
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